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6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF NEVADA**

8 In Re:) Case No. 11-19087-mkn
9) Chapter 7
EINHORN, CAROL,)
10 Debtor.)
11)
12 CAROL EINHORN, an individual; ARTHUR) Adv. Case No.:
EINHORN, an individual;)
13)
14 Plaintiff,)
15 vs.)
16 BANK OF AMERICA formerly)
COUNTRYWIDE HOME LOANS, INC., a)
17 foreign corporation; MORTGAGE)
ELECTRONIC REGISTRATION SERVICE, a)
18 foreign corporation; and DOE)
CORPORATIONS 1-10;)
19)
20 Defendants.)
21

22 **ADVERSARY COMPLAINT**

23 Plaintiffs, by and through their counsel of record, CJD LAW GROUP, LLC, hereby complain
24 and allege as follows:

25 **PARTIES**

- 26 1. Plaintiff, CAROL EINHORN, is an individual living in the State of Nevada.
27 2. Plaintiff, ARTHUR EINHORN, is an individual living in the State of Nevada.
28

1 3. Defendant, BANK OF AMERICA formerly COUNTRYWIDE HOME LOANS, INC.
2 (“BAC”), is a foreign financial institution doing business in the State of Nevada.

3 4. Defendant, US BANK NATIONAL ASSOCIATION (“US Bank”), is a foreign
4 corporation doing business in the State of Nevada.

5 5. Defendant, MORTGAGE ELECTRONIC REGISTRATION SERVICE(“MERS”), is
6 a foreign corporation doing business in the State of Nevada.

7
8 6. DOES 1 through 10 are the fictitious names of defendants who are the agents,
9 representatives and/or employees of the named Defendants who are equally responsible for Plaintiff’s
10 damages as alleged herein, in either a representative capacity or by virtue of independent acts and
11 omissions. When the true names and identities of these doe defendants are ascertained, Plaintiff will
12 seek leave to amend their Complaint to insert their true names and identities.

13
14 7. Upon information and belief, at all times herein mentioned, each of the Defendants
15 were the agent and employee of the other defendants and were acting within the course, scope and
16 authority of said agency; each Defendant approved, ratified and authorized the acts of each of the other
17 Defendants as herein alleged; each defendant was subject to a right of control by the other Defendants;
18 each Defendant was authorized to act for each and all of the other defendants; and/or each Defendant
19 is a successor in interest to each of the other defendants.

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21 **JURISDICTION AND VENUE**

22 8. This adversary proceeding is brought in connection with the Debtor’s Chapter 7 Case
23 No. 11-19087-mkn, pursuant to Bankruptcy Rule 7001(6). Jurisdiction exists over this adversary
24 proceeding under 28 U.S.C. § 1334(b) and § 157(b), and 11 U.S.C. §§ 362. This is a core proceeding
25 pursuant to 28 U.S.C. § 157(b)(2)(I).

26 9. Venue is proper in this Court under 28 U.S.C. § 1409 because this proceeding arises
27
28

1 in and is related to the Debtor's Chapter 7 case pending in this District.

2 **FACTUAL BACKGROUND**

3 10. On or about October 10, 2006 Arthurn Einhorn purchased real property identified
4 as 5250 S. Rainbow Blvd. Unit # 2046, Las Vegas, NV 89118, APN 163-26-214-089 (the "property").

5 11. Plaintiffs financed the purchase of the property through obtaining a loan with
6 Countrywide Home Loans. Upon information and belief, Plaintiffs believe that there was an associated
7 promissory note and deed of trust memorializing the alleged debt owed related to the property.
8

9 12. That upon information and belief, the promissory note and deed of trust were
10 purportedly transferred to BAC.

11 13. That upon information and belief, the promissory note and deed of trust became
12 disjointed or transmuted into a securitized debt, and thus destroyed the original loan documents or that
13 alleged holder in due course cannot verify that it is entitled to such recognition.
14

15 14. Plaintiffs believe that the Defendants are not the real parties in interest with regard to
16 the promissory note and deed of trust as they cannot evidence or otherwise verify their standing to
17 demand monies due from Plaintiffs for the alleged debt.

18 15. That NRS 104.3309 states that if a party is not in possession of an "instrument" they
19 must prove they are entitled to its enforcement.
20

21 16. That upon information and belief, Defendants are not entitled enforce the terms of their
22 alleged debt as they cannot evidence that a debt exists, that the promissory note and deed of trust were
23 separated, destroyed or transformed/securitized or were not permitted to transfer the promissory note
24 and deed of trust in the manner performed herein.

25 17. Furthermore, MERS cannot lawfully cause to be recorded a notice of default or other
26 documents as the promissory note and deed of trust, which provide them standing are of no effect.
27
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1 18. Plaintiffs seek relief from this Court and request that the debts allegedly owed to BAC
2 be deemed an unsecured debt, and be stricken from the title of the property as the Defendants cannot
3 provide evidence of its validity or otherwise transmuted the alleged debt.

4 **FIRST CAUSE OF ACTION**

5 **(Declaratory Relief)**

6
7 19. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs
8 as if set forth fully herein.

9 20. An actual controversy exists regarding the validity of the promissory note and deed of
10 trust allegedly recorded and in effect with respect to the property.

11 21. Plaintiffs contend that the promissory note and deed of trust do not exist in their
12 original form, have been securitized or are otherwise intangible and thus of no effect.

13 22. A judgment resolving the issue of whether the promissory note and deed of trust have
14 become unsecured based upon Defendants failure to evidence the validity of the claimed debt is
15 necessary to settle the dispute between the parties.

16
17 23. According this question is ripe for judicial determination pursuant to *McGraw-Edison*
18 *v. Preformed Line Products*, 362 F. 2d 339, 342 (9th Cir. 1966).

19 24. Wherefore, Plaintiffs respectfully requests that this Court determine that the promissory
20 note is an unsecured debt based on Defendants failure to establish that they are the holders in due
21 course and awarding Plaintiffs reasonable attorney's fees and costs for prosecuting this action.

22 **SECOND CAUSE OF ACTION**

23 **(Quiet Title)**

24
25 25. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs
26 as if set forth fully herein.

